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FILED

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE AM 9:24

RICHARD B. ROCKER, CLERK

Adell D.C.

STATE OF TENNESSEE, *ex rel.*)
ROBERT E. COOPER, JR.,)
ATTORNEY GENERAL and)
REPORTER,)

Petitioner,)

v.)

No. 09C83

DELL INC., a Texas corporation,)
and DELL FINANCIAL SERVICES,)
LLC, a Texas limited liability company,)

Respondents.)

AGREED FINAL ORDER

This cause came to be heard on the State of Tennessee's Petition and the parties' Assurance of Voluntary Compliance, and the Court is of the opinion that the Assurance of Voluntary Compliance should be approved. It is therefore ORDERED, ADJUDGED, and DECREED as follows:

1. The Assurance of Voluntary Compliance annexed hereto as Exhibit A and incorporated herein by reference is hereby made a part of this Agreed Final Order ("Order"), and is approved;

2. Pursuant to Tenn. Code Ann. § 47-18-107(c), Respondents shall comply with the terms of the Assurance of Voluntary Compliance unless rescinded in writing by the parties or modified as provided in the Assurance and approved by this Court for good cause shown;

3. Jurisdiction of this Court over the subject matter herein and over the person of the Respondents for the purposes of entering into and enforcing this Order and the Assurance is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Order and Assurance, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Order and Assurance is solely in Davidson County, Tennessee;

4. As required by the Assurance and this Order, Respondents shall pay the multistate group the total sum of One Million Eight Hundred Fifty Thousand Dollars (\$1,850,000.00), of which Forty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$46,666.67) shall be distributed to the State of Tennessee. As approved by this Court, the State of Tennessee has determined to use this payment for the purposes set forth as follows:

- A. Pursuant to Tenn. Code Ann. § 47-18-108(a)(5) and § 47-18-108(b)(4), Sixteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$16,666.67) shall be paid to the State of Tennessee, Attorney General for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes or other lawful purposes at the sole discretion of the Attorney General;
- B. Fifteen Thousand Dollars (\$15,000.00) shall be paid to the State of Tennessee's General Fund;
- C. Fifteen Thousand Dollars (\$15,000.00) shall be paid to the State of Tennessee to fund a consumer education project(s) selected at the sole discretion of the Director of the Division of Consumer Affairs or to fund investigations and/or litigation pursuant to the Tennessee Consumer Protection Act of 1977 selected at the sole discretion of the Director of the Division of Consumer Affairs;
- D. If the entire amount anticipated by the State of Tennessee is not received or is received over time, any monies received shall first be attributed to

attorneys' fees pursuant to paragraph A, next to General Fund payment pursuant to paragraph B, and finally to the Division of Consumer Affairs payment pursuant to paragraph C; and

- E. Any other or additional sums received by the State of Tennessee shall be paid to the State of Tennessee, Attorney General which may be used for consumer protection purposes or other lawful purposes at the sole discretion of the Attorney General;

5. As required by the Assurance and this Order, Respondents shall place One Million Five Hundred Thousand Dollars (\$1,500,000.000) into an escrow account to be used for restitution payments to consumers of the states participating in this multistate group. Respondents shall turn over Unclaimed Funds under the Assurance to the State of Tennessee which shall be treated as unclaimed property in the possession of the State of Tennessee pursuant to the Uniform Disposition of Unclaimed Property Act, Tenn. Code Ann. § 66-29-101 *et seq.* These funds may be delivered to the Treasurer prior to the statutory due date of one (1) year set forth in Tenn. Code Ann. § 66-29-110, covering unclaimed property held by courts, public officers and agencies. The Respondents shall provide a report to the Attorney General and Reporter within six (6) months of the entry of the Assurance which details the amount delivered to the Treasurer for treatment as unclaimed property under the State statute. Respondents shall continue to provide this information every six (6) months until all funds have been claimed and/or returned to the Respondents;

6. Pursuant to Tenn. Code Ann. § 47-18-107(c), any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act. Further, pursuant to Tenn. Code Ann. § 47-18-107(f), any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) recoverable by the state for each violation, in addition to any other appropriate penalties and sanctions;

7. Pursuant to Tenn. Code Ann. § 47-18-107(c), an Assurance of Voluntary Compliance shall not be considered an admission of prior violation of the Tennessee Consumer Protection Act;

8. Pursuant to Tenn. Code Ann. § 47-18-107(e), nothing in the Assurance shall be construed as a waiver of any private rights of any consumer/person;

9. This Order and the Assurance shall only be enforceable by the parties to this action;

10. This Order does not entitle Respondents to seek or to obtain attorneys' fees as a prevailing party under any statute, regulation or rule, and Respondents further waive any rights to attorneys' fees that may arise under such statute, regulation or rule.

11. Respondents waive any and all rights which it may have to be heard in connection with judicial proceedings upon the Petition;

12. Nothing in the Assurance or Order shall be construed to waive any claims of Sovereign Immunity the State may have in any action or proceeding; and

13. Pursuant to Tenn. Code Ann. § 47-18-116, no costs shall be taxed against the State. Costs for filing the Petition, Assurance, and Order shall be paid out of the money received under the Agreed Final Order and Assurance of Voluntary Compliance. Further, no discretionary costs shall be taxed to the State.

IT IS SO ORDERED.

I hereby certify that this is a true copy
of original instrument filed in my office
this 12th day of Jan 20 09

RICHARD R. FROOKER Clerk

By [Signature]

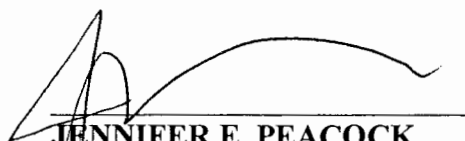
Deputy Clerk

[Signature]
JUDGE

**JOINTLY APPROVED AND
SUBMITTED FOR ENTRY:**

**FOR THE ATTORNEY GENERAL OF
THE STATE OF TENNESSEE:**

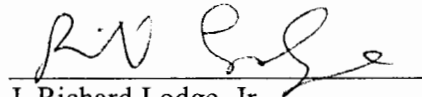
ROBERT E. COOPER, JR.
Attorney General and Reporter
B.P.R. No. 10934

A handwritten signature in black ink, appearing to read 'JENNIFER E. PEACOCK', is written over a horizontal line.

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APPROVED AS TO FORM AND ENTRY REQUESTED:

**COUNSEL FOR RESPONDENTS DELL INC. AND DELL FINANCIAL SERVICES,
LLC:**

A handwritten signature in black ink, appearing to read "R. V. Lodge", written over a horizontal line.

J. Richard Lodge, Jr.

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